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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,006	01/05/2006	Pierre Messier	102785-337-NP2	9028
24964	7590	09/04/2007	EXAMINER	
GOODWIN PROCTER L.L.P			DIXON, ANNETTE FREDRICKA	
599 LEXINGTON AVE.			ART UNIT	PAPER NUMBER
NEW YORK, NY 10022			3771	
MAIL DATE		DELIVERY MODE		
09/04/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/528,006	MESSIER, PIERRE
	Examiner	Art Unit
	Annette F. Dixon	3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 July 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/9/07.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. This Office Action is in response to the amendment filed on July 9, 2007. Examiner acknowledges claims 1-17 are pending in this application, with claims 1,-3, 7, 9-11, and 15 having been amended, with claim 16 having been newly added.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, independent claim 1 recites the "permeable filtering material affixed to said periphery of said facemask to sit between said periphery of said face mask and a face of a user...". This clause (and other similar clauses) appears to positively recite a portion of the human body. The use of "face of a user" raises the possibility that the Applicant is positively reciting a face of a human being. Accordingly, claim 1 is considered to be directed to non-statutory subject matter. 1077 OG 24 (April 21, 1987). Dependant claims 2-17 incorporates the non-statutory subject matter in the claims from which they depend. Applicant can overcome this rejection by reciting "... said facemask adapted to sit between said periphery of said facemask and a face of the user...".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Rezuke et al. (US 5582865).

As to Claims 1, 2, 7, 8, 9, 10, and 15-17, Rezuke discloses a face mask (Figure 3) having a periphery designed to abut a persons face and a tri-dimensional breathing material (Figures 1, 2, 2a, and 2b) having an electrostatic charge there across; said tri-dimensional breathing material attached to said periphery of said facemask to form a filtering enclosure. (Column 3, Lines 6-10). Regarding the electrostatic charge, Rezuke discloses the absorbent particles may include ion exchange resins and further discloses the use of impregnated iodine. (Column 3, Lines 48-49, and Examples II, VIII, and IX).

As to Claims 2-6 and 11-14, Rezuke discloses the composite filter element (16) is made of a non-woven polyester batting. (Figures 1, 2, 2a, and 2b; and Column 2, Line 45 thru Column 3, Line 20).

5. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Messier (US 5639452).

As to Claims 1, 2, 7, 8, 9, 10, and 15-17, Messier discloses a combination wherein an absorbent article made of a textile is utilized in combination with an active agent having an electrostatic charge. Specifically Messier discloses the absorbent

article or carrier component could be a facemask and the active agent is iodinated resin having a strong base anion exchange. (Figures 7-11; Column 6; Column 35, Lines 20-35).

As to Claims 3-6 and 11-14, Messier discloses the absorbent article or carrier component is made from a non-woven, fiber based, sponge-like material. Specifically, Messier discloses a sponge (39) having a matrix structure (40). (Columns 33 and 34).

6. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Messier (US 6045820).

As to Claims 1, 2, 7, 8, 9, 10, and 15-17, Messier discloses a combination wherein an absorbent article made of a textile is utilized in combination with an active agent having an electrostatic charge. Specifically Messier discloses the absorbent article or carrier component could be a facemask and the active agent is iodinated resin having a strong base anion exchange. (Figures 7-11; Column 6; Column 35, Lines 27-42).

As to Claims 3-6 and 11-14, Messier discloses the absorbent article or carrier component is made from a non-woven, fiber based, sponge-like material. Specifically, Messier discloses a sponge (39) having a matrix structure (40). (Columns 33 and 34).

7. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Messier (US 5980827).

As to Claims 1, 2, 7, 8, 9, 10, and 15-17, Messier discloses a combination wherein an absorbent article made of a textile is utilized in combination with an active agent having an electrostatic charge. Specifically Messier discloses the absorbent article or carrier component could be a facemask and the active agent is iodinated resin having a strong base anion exchange. (Figures 7-11; Column 6; Column 35, Line 61 thru Column 36, Line 19).

As to Claims 3-6 and 11-14, Messier discloses the absorbent article or carrier component is made from a non-woven, fiber based, sponge-like material. Specifically, Messier discloses a sponge (39) having a matrix structure (40). (Columns 33 and 34).

### ***Response to Arguments***

8. Applicant's arguments filed July 9, 2007 have been fully considered but they are not persuasive. Applicant asserts Rezuke fails to teach or fairly suggest a periphery that contains a tri-dimensional permeable filtering material affixed to the periphery. Examiner respectfully disagrees with Applicant's assertion. The mask of Rezuke (Figure 3) is made from the composite materials (seen in Figures 1, 2, 2a, and 2b). The composition of the mask contains a filtering layer, a center composite material layer and a backing layer. As the mask is formed with each of the aforementioned layers, inherently the composite is present in the periphery of the mask as recited within the claim limitations. Therefore, the rejection of claims 1-16 has been maintained..

### ***Conclusion***

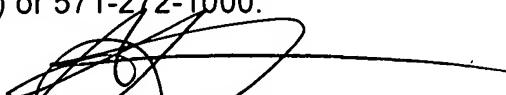
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berrigan et al. (5,641,555).
  
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Annette F. Dixon  
Examiner  
Art Unit 3771



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8/31/07